Caravan Knight Facilities Management, Inc. *and* Aretha A. Powell

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 1700 *and* Aretha A. Powell. Cases 07–CA–081195 and 07–CB–082391

August 27, 2015

DECISION AND ORDER

BY MEMBERS MISCIMARRA, JOHNSON, AND MCFERRAN

On April 3, 2013, Administrative Law Judge Michael A. Rosas issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Employer and the Union filed answering briefs, and the General Counsel filed a reply brief. The Employer filed cross-exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.

The Employer and Union are parties to a collective-bargaining agreement requiring, among other things, that an overtime equalization list be posted on a bulletin board. In 2009, Employer Site Manager Shoun Walle and employee and Union Chairperson LeVaughn Davis agreed to stop posting the list in the "cage" (where employees clock in and out and where pre-shift meetings are held) because the list was frequently removed or defaced. From 2009 to 2012, the list was posted in Walle's office. In April 2012,[3] the Employer resumed posting the list in the cage after employee (and Charging Party) Aretha Powell objected to the parties' practice of not doing so. Much of the overtime work was in the body wash area of the plant, and this work was considered onerous and undesirable by most employees. Nonetheless, Davis worked a substantial amount of voluntary overtime. The judge found that Davis stood to lose some of that overtime once the overtime equalization list was posted as a result of Powell's complaint. However, the record evidence fails to support that finding. Rather, as explained in the margin, the evidence shows that Davis's ability to volunteer for overtime would have been unaffected by the posting of the list.[4]

The judge dismissed the complaint in its entirety. He found that the Employer did not violate Section 8(a)(3) and (1) by discharging Powell on May 16 after she threatened employee and Union Executive Board Member Balinda Tanner.[5] He neglected, however, to address allegations that the Employer violated Section 8(a)(3) and (1) by assigning Powell different work, assigning her to clean the body wash area, and disciplining her on May 10, all because she engaged in the protected union activity of protesting the parties' failure to post the overtime equalization list. We dismiss these allegations for the reasons stated below. We also affirm, for the reasons stated herein, the judge's finding that the Union did not violate Section 8(b)(2) by submitting a witness statement to the Employer about Powell's threat. Contrary to the judge, however, we find that the Union breached its duty of fair representation owed to Powell in violation of Section 8(b)(1)(A) based on the particular circumstances presented here, and we also find that the Employer violated Section 8(a)(1) by coercively interrogating employee Jackie Keys about her statements to the Board agent investigating Powell's unfair labor practice charges.

1. *Alleged 8(a)(3) Violations*. Following Powell's April 11 protest about the overtime equalization list, the Employer changed her work assignment on April 20 to require her to devote 4 hours to her usual cleaning duties

[1] There are no exceptions to the judge's finding that the Respondent International Union did not violate the Act.

[2] The Employer and General Counsel have each excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] All dates are in 2012 unless otherwise noted.

[4] Shawn Dean, vice president of Local 1700, and Site Manager Walle provided uncontradicted and mutually corroborative testimony regarding overtime. Their testimony establishes the following. First, employees may and do volunteer for overtime. The overtime equalization list, which shows each employee's cumulative overtime hours since the beginning of the year, comes into play only when either too few or too many volunteer. If too few volunteer, employees are assigned mandatory overtime, beginning with those with the fewest overtime hours. If too many volunteer, those with fewer overtime hours are selected over those with more. Second, the *posting* of the list has no effect on who is assigned mandatory overtime. The Employer keeps electronic records of employees' overtime hours, and it assigns mandatory overtime or selects from among a surplus of volunteers based on those records. Thus, the posted list does not affect overtime assignments; it simply informs employees how their overtime hours stack up relative to one another. Referring to the overtime equalization list, Union Vice President Dean testified that "[y]our hours are your hours whether it's posted or not" (Tr. 79).

[5] The judge spelled Ms. Tanner's first name "Belinda." Ms. Tanner testified that "Balinda" is the correct spelling (Tr. 1151).

and the other 4 hours to sweeping floors in the main plant. The Employer also assigned Powell to work overtime during the five weekends following her protest. Beginning on May 5, some of Powell's overtime work included assignments to the body wash area. Powell had not previously worked in body wash since transferring to the first shift. The General Counsel alleges that the April 20 change in Powell's work assignment and her assignments to the body wash area starting May 5 were motivated by her union activity of complaining about posting the overtime equalization list.

On May 10, Powell walked away from the "cage" area where the morning preshift meeting was being conducted to look at a bulletin board about 40–50 feet away. It was not uncommon for employees to move around during these meetings, or to eat, use the microwave, go to their lockers, or stand outside the cage area. After the meeting, Shift Supervisor Lamont Richie asked Powell to relate the main safety topic of the meeting. She could not answer correctly, and the Employer issued her a written warning. The General Counsel alleges that the May 10 discipline was similarly motivated by Powell's protected complaint about the overtime list.

On May 11, Powell threatened Tanner with physical violence.[6] Tanner reported the incident to employee and Union Steward Margaret Faircloth, and Tanner, Faircloth, and Davis thereafter reported the incident to Walle. Following an investigation, the Employer discharged Powell on May 16. The General Counsel asserts that this discharge, too, was motivated by Powell's complaint about the overtime list.

To determine whether an employer's adverse employment action violates Section 8(a)(3) and (1), the Board applies the analysis articulated in *Wright Line,* 251 NLRB 1083 (1980) (subsequent history omitted). To establish a violation of Section 8(a)(3) under *Wright Line,* the General Counsel must show, by a preponderance of the evidence, that an employee's union activity was a motivating factor in the employer's decision to take adverse action against the employee. Id. at 1089. If the General Counsel makes the required showing, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the employee's union activity. Id.

Here, it is undisputed that Powell engaged in protected union activity when she protested the failure to post the overtime equalization list as required by the collective-bargaining agreement, and it is similarly undisputed that the Employer was aware of that activity. We find, however, that the General Counsel failed to establish animus on the Employer's part towards Powell's union activity. In 2009, Walle had agreed with Union Chairperson Davis to stop posting the list in the cage because employees kept defacing or removing it. When Powell complained, Walle promptly resumed posting the list in the cage. Asked if he was upset about this, Walle testified that he "really didn't even think two thoughts about it" (Tr. 147). Walle's indifference is consistent with his related testimony, credited by the judge, that he did not care who worked overtime in the body wash area as long as there were enough volunteers. For these reasons, we find that the General Counsel has not established that Powell's union activity was a motivating factor in her discharge, and we dismiss this allegation on that basis.

We reach the same conclusion with regard to the changes in Powell's work assignments—the addition of sweeping floors in the main plant for half of her shift and overtime in the body wash area. Assuming that these assignments constituted adverse actions, the General Counsel has failed to establish that they were motivated by Powell's union activity. In addition to the reasons stated above, there is no evidence that Powell was assigned to weekend overtime unfairly—i.e., that employees with fewer overtime hours were skipped over to reach Powell. And there is no evidence that when Powell worked weekend overtime, she was unfairly targeted for more than her share of body wash work. Similarly, although the Employer changed Powell's duties on April 20, there is no evidence that the Employer assigned her more work overall than other similarly situated employees. Thus, in addition to the lack of evidence that the Employer was hostile to Powell's request to resume posting the overtime list, there is no substantial evidence of disparate treatment that would support a finding of unlawful motivation.

Regarding the discipline issued on May 10, there is some evidence to suggest that the Employer may not have disciplined other employees who wandered around or engaged in similar conduct during preshift meetings. But, here, the Employer did not discipline Powell merely because she was wandering around during the meeting. Rather, the Employer disciplined her only after determining that she could not state the main safety topic of the meeting. Moreover, the judge found that employee conduct at preshift meetings was a problem that concerned the Employer, the record supports the judge's finding, and the Employer's concerns predated Powell's April 11 protest regarding the posting of the overtime list. Finally, the evidence indicates that although Walle (with the Union's agreement) removed the overtime equalization list from the cage because employees repeatedly defaced

[6] Powell told Tanner, "I see I'mma have to tear off into your motherfucking ass."

or removed it, he promptly reposted it when Powell complained and did not "think two thoughts about it." Under the circumstances, the evidence is insufficient to support a reasonable inference that Powell's complaint about posting the overtime list was a motivating factor in her May 10 discipline.

Accordingly, we will dismiss these three allegations.

2. *Alleged 8(b)(2) Union report to Employer regarding threat made by Powell*. In early May, Powell stated that she wanted to fight employee and Union Steward Margaret Faircloth, and she offered to pay $100 to anyone who would fight Faircloth. Union Executive Board Member Balinda Tanner witnessed the threat and told Faircloth about it. Powell learned that Faircloth was aware of her comments and apologized to Faircloth, and Faircloth did not report this threat to the Employer. On May 11, Powell threatened Tanner with physical violence. Tanner reported the threat to Faircloth. Faircloth testified that she informed Tanner that Tanner "had choices. She could report the issue, make a statement, or speak to" Union Chairperson LeVaughn Davis. Tanner chose to speak to Davis; thereafter, Tanner, Faircloth, and Davis reported the incident to Walle. Faircloth and Tanner submitted witness statements to the Employer regarding the incident. Faircloth testified that she prepared her statement at Davis's request. In her witness statement, Faircloth asserted that she had witnessed the threat. Consistent with the judge's credibility determinations, which we have adopted, that was not the case. Instead, Faircloth learned of the threat when Tanner reported it to Faircloth immediately following the incident.

The complaint alleges that the Union, by Faircloth and Tanner, violated Section 8(b)(2) by presenting these witness statements to the Employer. The judge dismissed this allegation on the grounds that Faircloth and Tanner were not acting as agents of the Union when they submitted their statements, and even if they were, they did nothing more to cause Powell's discharge than submit "required employee witness statements." As explained below, we agree that Tanner was not acting as the Union's agent when she submitted her witness statement, but we find that Faircloth was. However, we also find that she did not cause the Employer to discriminate against Powell in violation of Section 8(b)(2).

To establish a violation of Section 8(b)(2), there must be some evidence of union conduct; it is not sufficient that an employer's conduct might please the union. *Wenner Ford Tractor Rentals, Inc.,* 315 NLRB 964, 965 (1994). Thus, we first address whether Faircloth and/or Tanner were acting as agents of the Union when they provided the Employer with statements about Powell's threat.

Faircloth was an elected union steward whose duties included processing grievances on the Union's behalf. The Board regularly finds elected or appointed union officials to be agents of the union. See, e.g., *Security, Police and Fire Professionals of America (SPFPA) Local 444 (Security Support Services)*, 360 NLRB No. 57, slip op. at 7 (2014); *Penn Yan Express*, 274 NLRB 449 (1985); *IBEW Local 453 (National Electrical Contractors Assn.)*, 258 NLRB 1427, 1428 (1981), enfd. mem. 696 F.2d 999 (8th Cir. 1982). Although holding elective office does not mandate a finding of agency per se, it is persuasive and substantial evidence that will be decisive in the absence of compelling contrary evidence. *SPFPA Local 444*, supra; *IBEW Local 453*, supra.[7] We find no compelling contrary evidence here.

We recognize that "a union is not responsible for every act of a shop steward, simply by virtue of his position. If he acts only as an individual rather than within the authority the union has conferred, the union is absolved." *NLRB v. Teamsters Local 815,* 290 F.2d 99, 104 (2d Cir. 1961). Faircloth, however, plainly acted in her steward capacity when she informed Tanner of her options, which included reporting the threat and making a statement. Moreover, Faircloth testified that she was acting at Union Chairperson Davis's behest when she prepared her statement. Under all the circumstances discussed above, we find she was acting as an agent of the Union when she provided the Employer her witness statement.[8]

Having found union conduct, we next determine whether the Union violated Section 8(b)(2) when Faircloth provided the Employer her witness statement. A union violates Section 8(b)(2) when it causes or attempts to cause an employer to discriminate against an employee in violation of Section 8(a)(3). *Paperworkers Local 1048 (Jefferson Smurfit Corp.),* 323 NLRB 1042, 1044

[7] The judge failed to cite or apply this long-standing precedent.

[8] Although Tanner was an elected member of the Union's executive board, the General Counsel's burden was to show that Tanner's position was one of some "prominence or actual authority." *IBEW Local 453*, supra, 258 NLRB at 1428. In *IBEW Local 453*, the Board found that a union executive board member was an agent of the union where the evidence showed that the executive board was the union's primary governing body, was involved in membership issues and all financial matters, acted as a trial board for internal union charges, and was responsible for the union's daily operations between regular union meetings. No such evidence was presented here. Tanner testified without contradiction that the Union's executive board plays no role in grievances, and the only evidence of its authority was her vague testimony that it votes "on different things that go on throughout the whole plant, not just for Caravan or Chrysler together. It's just like a Caravan, I guess you could say like just a person for Caravan of interest for our people as to what's going on and to have a say." On this record, *IBEW Local 453* is clearly distinguishable, and the General Counsel has not shown that Tanner's position on the executive board was "not a titular position devoid of any prominence or actual authority." Id.

(1997). In determining whether a union has violated Section 8(b)(2), the Board has applied both the analytical framework set forth in *Wright Line*[9] and the duty-of-fair-representation framework.[10] For the reasons that follow, we find that the Union did not violate Section 8(b)(2) under either standard.[11]

Under the duty-of-fair-representation standard, whenever a labor organization causes the discharge of an employee, there is a rebuttable presumption that it acted unlawfully because by such conduct it demonstrates its power to affect the employees' livelihood in so dramatic a way as to encourage union membership among the employees. *Acklin Stamping*, supra, 351 NLRB at 1263; *Graphic Communications Local 1-M (Bang Printing)*, supra, 337 NLRB at 673. One way in which a union may rebut that presumption is by showing that it acted pursuant to a valid union-security clause. *Operating Engineers Local 18 (Ohio Contractors Assn.)*, supra, 204 NLRB at 681. The other is by showing that its actions were "done in good faith, based on rational considerations, and were linked in some way to its need effectively to represent its constituency as a whole." *Operative Plasterers & Cement Masons, Local No. 299 (Wyoming Contractors Assn.)*, 257 NLRB 1386, 1395 (1981).

Under the Employer's work rules, threatening an employee is a "major offense" for which employees are subject to discharge without warning. Consistent with this rule, in 2011 the Employer discharged employee Kendall Shepard after Faircloth submitted a witness statement against him for a verbal altercation with Faircloth and supervisor Scott Paulson during which Shepard threatened Faircloth. Thus, when Davis and Faircloth reported Powell's threat and Faircloth submitted a witness statement supporting that report, they knew full well that doing so would in all likelihood result in Powell's discharge. Accordingly, we find that the Union effectively caused Powell's discharge. *Town & Country Supermarkets*, supra, 340 NLRB at 1411, 1430 (union caused discharge when it reported employee for threat of physical harm knowing employer's history of discharging employees for such threats); *Paperworkers Local 1048*, supra, 323 NLRB at 1044 (union attempted to cause discipline when it reported employee for racial harassment to employer with a policy of strong discipline for violation of rules against racial harassment).

Under the duty-of-fair-representation framework, there is a rebuttable presumption that this request violated Section 8(b)(2). We find, however, that the Union rebutted that presumption here. Based on the credited testimony, Powell threatened to fight Faircloth in early May and then threatened to fight Tanner on May 11. A union has a legitimate interest in reporting such threats to an employer, consistent with its duty to represent all unit employees. See *Acklin Stamping,* 355 NLRB 824, 825–826 (2010) (union lawfully sought discharge of employee based on reasonable concerns his presence on jobsite endangered coworkers because he was unqualified); *Graphic Communications Local 1-M (Bang Printing)*, supra, 337 NLRB at 674 (recognizing that unions have legitimate interest in reporting genuine instances of sexual harassment to employer). Faircloth testified that she did not report the threat in early May because Powell apologized and "[b]ecause I'm a steward and a coworker." She reported the May 11 threat, however, because Tanner was being threatened and Powell's behavior was escalating.

In some cases the Board has found similar union reports to be a pretext for discrimination, but those cases involve facts not present here. See *Town & Country Supermarket*, supra, 340 NLRB at 1411 (union official belatedly reported threat only after employee's dissident activity and did not consider threat to be serious); *SPFPA Local 444*, supra, 360 NLRB No. 57, slip op. at 6–7 (union official provided exaggerated and misleading account of employee's outburst to employer's client despite not actually considering employee to have engaged in any misconduct); *Paperworkers Local 1048*, supra, 323 NLRB at 1044 (union official belatedly reported employee for alleged racial harassment only after dissident activity, contrary to its practice of not involving management in disputes between employees). Faircloth did not make a belated report of the May 11 threat only after dissident activity on Powell's part (assuming Powell's complaint about the nonposting of the overtime equalization list qualifies as dissident union activity). Instead, her report was contemporaneous with Powell's threat. Moreover, Faircloth did *not* report Powell's early May threat to fight Faircloth, an incident closer in time to Powell's complaint about the list, which undercuts any notion that the Union was out to get Powell and seized on the May 11 threat to get rid of her. Even if Faircloth falsely stated that she witnessed the encounter in an effort to bolster the complaint, that does not mean that she submitted the witness statement because of Powell's dis-

[9] See *SPFPA Local 444*, supra, 360 NLRB No. 57, slip op. at 6–7; *Town & Country Supermarkets*, 340 NLRB 1410, 1411 (2004); *Freight Drivers, Local 287 (Container Corp. of America)*, 257 NLRB 1255, 1258–1259 & fn. 18 (1981).

[10] See *Operating Engineers Local 18 (Ohio Contractors Assn.)*, 204 NLRB 681 (1973), enf. denied on other grounds 555 F.2d 552 (6th Cir. 1977) (per curiam); *Acklin Stamping Co.*, 351 NLRB 1263, 1263 (2007); *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 673 (2002); *Operating Engineers Local 478 (Stone & Webster)*, 271 NLRB 1382, 1382 fn. 2 (1984).

[11] The judge did not apply either framework.

sident activity. To the contrary, Faircloth's reporting of the May 11 threat is consistent with her submission of a witness statement regarding Shepard's threat. Moreover, Faircloth reasonably explained that she reported Powell's behavior because it was escalating.

We reach the same result—dismissal of the Section 8(b)(2) allegation—applying a *Wright Line* analysis. Assuming without deciding the General Counsel established his initial burden under *Wright Line*, we find the Union established that it would have taken the same action even in the absence of Powell's protected union activity, essentially for the reasons stated above. Powell did threaten Tanner with physical violence, within days of a similar threat directed at Faircloth, and a union has a legitimate interest in reporting such threats to an employer, consistent with its duty to represent all unit employees. The report was made immediately after the threat, and it was consistent with the Union's treatment of employee Shepard under similar circumstances. For all of the foregoing reasons, we find that the Union has established that it would have reported Powell's threat even absent her protected activity and we therefore dismiss this complaint allegation.

3. *Alleged breach of the Union's duty of fair representation in violation of Section 8(b)(1)(A)*. After Powell's May 16 discharge, the Union filed a grievance challenging the discharge. At step 2, Davis negotiated a settlement offer under which the Employer would reinstate Powell if she completed an anger management class and submitted to a 90-day "last chance" agreement. This settlement was consistent with a settlement negotiated for Shepard after he was discharged for the verbal altercation with Faircloth and Paulson discussed above. Powell refused the offer, after which the grievance was settled with Powell's discharge allowed to stand.

A union breaches its statutory duty of fair representation in violation of Section 8(b)(1)(A) when its conduct towards a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *Roadway Express*, 355 NLRB 197, 202 (2010), enfd. 427 Fed. Appx. 838 (11th Cir. 2011) (per curiam) (citing *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)). The complaint alleges that the Union violated Section 8(b)(1)(A) by refusing "to process to arbitration" Powell's grievance. We find no breach of the duty of fair representation in the Union's failure to take the grievance to arbitration for the reasons the judge stated in his decision. The Union negotiated a settlement that was reasonable and consistent with a recent settlement negotiated for another employee. Moreover, a union has substantial latitude to determine whether to process a grievance through to arbitration,[12] and the facts presented here establish that the Union could reasonably conclude that Powell's grievance did not warrant taking it to arbitration.

However, we find merit in an alternative theory of violation that has been articulated by the General Counsel, who argues that Faircloth's representation of Powell at step 1 of the grievance procedure violated the duty of fair representation because Faircloth was hostile to Powell, did not fully divulge the accusations Powell faced, and filed a false statement against her.[13] We find that the Union violated Section 8(b)(1)(A) based on the following facts, which we consider cumulatively: (i) Union Steward Faircloth submitted a statement against Powell that was, in part, false; (ii) Faircloth represented Powell in step 1 of the grievance procedure without disclosing that she had submitted a statement against Powell; and (iii) throughout the processing of her discharge grievance, Powell remained unaware that Faircloth had submitted a statement regarding the matters at issue in Powell's grievance. We find it particularly significant that Faircloth represented Powell at step 1 of the parties' grievance procedure without disclosing either the existence or the nature of her statement against Powell. Faircloth thus deprived Powell of a potentially crucial piece of information—that the Employer had what appeared to be an eyewitness statement corroborating Tanner's report—that reasonably could have altered Powell's approach to the processing of her grievance. Had Powell known of Faircloth's statement, Powell might have asked the Union for a different representative. As found by the judge, Faircloth offered *no* arguments on Powell's behalf at the step 1 grievance meeting. Later, Powell might have accepted the Employer's step-2 offer to reinstate her subject to certain conditions. The submission of a statement by Faircloth regarding the matters in dispute reasonably could have affected Powell's evaluation of the Employer's settlement offer and her assessment of whether the Union was likely to pursue her grievance to arbitration in the absence of a settlement. Instead, Powell rejected that offer, and the Union let her discharge stand. We are persuaded that these actions, considered

[12] See, e.g., *Transit Union Division 822*, 305 NLRB 946, 949 (1991) ("An employee has no absolute right to have a grievance processed through to any particular stage of the grievance procedure or to have a grievance taken to arbitration. A union may screen grievances and press only those it concludes will justify the expense and time involved . . . .").

[13] This is not the conduct alleged in the complaint to have violated Sec. 8(b)(1)(A). However, the lawfulness of the Union's handling of Powell's grievance is closely connected to the subject matter of the complaint and was fully litigated. See *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990).

together, constitute bad faith or impermissible arbitrary conduct. That is anything but "fair representation."

We emphasize the unique circumstances that narrowly circumscribe our Section 8(b)(1)(A) finding here. We would not find a violation based merely on the fact that Faircloth provided the Employer a statement concerning the incident under investigation, even though that statement was adverse to a unit employee. As we stated above, a union has a legitimate interest, based on its duty to fairly represent the interests of the entire bargaining unit, in reporting workplace violence or threats of violence. Nor does the fact that Faircloth misrepresented that she witnessed the threat constitute a per se breach of Section 8(b)(1)(A). We have found that the Union did not violate Section 8(b)(1)(A) by exercising its discretion not to arbitrate Powell's grievance. Nor are we suggesting here that the Union was required to furnish a copy (or disclose the substance) of Faircloth's statement to Powell.[14] Rather, we regard as material the absence of any disclosure to Powell—before, during, or after Faircloth's representation of Powell at step 1—that Faircloth had submitted a statement to the Employer relevant to Powell's grievance. If this fact had been disclosed to Powell, it is possible that Faircloth might have represented Powell with no violation of Section 8(b)(1)(A). Cf. *Roadway Express*, supra, 355 NLRB at 202 (union did not breach duty of fair representation by permitting business agent to represent grievant "notwithstanding their adversarial relationship").

4. *Alleged 8(a)(1) interrogation of employee about her statement to the Board.* The judge found that the Employer did not violate Section 8(a)(1) of the Act by interrogating employee Jackie Keys about a statement she made to Board agents during the Board's investigation of the charges in this case without providing the safeguards required in *Johnnie's Poultry Co.*, 146 NLRB 770, 775 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965). The judge reasoned that *Johnnie's Poultry* was inapplicable because no Board hearing was scheduled regarding Powell's charges at the time the Employer interrogated Keys. We reverse.

An employer who interrogates an employee witness in preparation for a Board hearing must, among other safeguards, give the employee explicit assurance against reprisal for refusing to answer or for the substance of any answer given. *Freeman Decorating Co.,* 336 NLRB 1, 14 (2001), enf. denied on other grounds sub nom. *Stage Employees IATSE v. NLRB,* 334 F.3d 27 (D.C. Cir. 2003). Here, without giving Keys this assurance, the Employer asked Keys why she told Board agents investigating this case that the Employer had never interviewed her during its initial investigation of Powell's threat. The question obviously conveyed to Keys the Employer's interest in her statement made to the Board during its unfair labor practice investigation, because the Employer directly sought information about that statement. Moreover, a truthful answer to the question would have confirmed that she made the statement at issue. In these circumstances, we find the Employer's failure to provide the *Johnnie's Poultry* assurances to Keys violated Section 8(a)(1). Contrary to the judge, these principles apply regardless of whether a hearing date has been scheduled. *Gene's Bus Co.,* 357 NLRB No. 85, slip op. at 2 (2011) (applying *Johnnie's Poultry* where the questioning at issue took place prior to the issuance of the complaint).[15]

REMEDY

Having found that the Respondent Employer violated Section 8(a)(1) of the Act and the Respondent Union violated Section 8(b)(1)(A) of the Act, we shall order each of them to cease and desist and to take certain affirmative action necessary to effectuate the policies of the Act.

Specifically, having found that the Respondent Union breached its duty of fair representation owed to Aretha Powell in connection with the processing of her grievance in violation of Section 8(b)(1)(A), we shall provide the remedy prescribed in *Iron Workers Local 377 (Alamillo Steel Corp.),* 326 NLRB 375 (1998). Accordingly, we shall order the Respondent Union to promptly request that the Employer consider Powell's grievance, commencing at step 1, and, if it agrees to do so, to process the grievance in accordance with the then-extant collective-bargaining agreement between the Respondent Union and the Employer, including whatever settlement

[14] In a recent, divided opinion, the Board addressed the potential obligation of an employer, upon request by a union, to give the union copies of witness statements obtained during certain investigations. See *Piedmont Gardens*, 362 NLRB No. 139 (2015). However, neither *Piedmont Gardens* nor this opinion indicates that any obligation exists for unions or employers to give copies or convey the substance of witness statements to grievants or other employees. See id., slip op. at 4 fn. 12 ("[N]othing in our decision today prevents the parties from bargaining over a reasonable accommodation, such as a nondisclosure agreement, when the employer has a legitimate confidentiality concern regarding the union's use of the requested information," and "[i]f disclosure [of a witness statement] is ultimately required . . . , it is disclosure to the union, not to supervisors or coworkers. And . . . the union can, and almost certainly will, refuse to provide such statements to involved individuals.").

[15] Members Miscimarra and Johnson agree with the principle for which *Gene's Bus* is cited above, and that the Employer's questioning of Keys regarding her statement to the Board was subject to *Johnnie's Poultry* safeguards. They did not participate in *Gene's Bus*, and they express no view as to whether *Johnnie's Poultry* safeguards were required for the questioning at issue in that case.

discussions or proposals may be consistent with the parties' processing of the grievance.

In addition, we shall order the Respondent Union to permit Powell to be represented by her own counsel at any grievance proceeding, including any arbitration that the Union authorizes or other resolution proceedings that may follow from the Respondent Union's efforts on Powell's behalf, and pay the reasonable legal fees of such counsel.[16] Following exhaustion of any renewed grievance processing in the pre-arbitration stages of the grievance procedure, the Union may exercise its discretion, consistent with its duty of fair representation, and decide in good faith whether or not to pursue the grievance to arbitration. In the event that it is not possible to pursue the grievance based on the Employer's unwillingness to do so, and if the General Counsel shows in compliance proceedings that a timely pursued grievance would have been successful in arbitration, the Respondent Union shall make Powell whole for increases in damages, if any, suffered as a consequence of its failure to process her grievance in good faith, as set forth in *Iron Workers Local Union 377 (Alamillo Steel Corp.)*, supra, with interest at the rate prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010).[17]

[16] We have found that the Union's prior decision not to pursue Powell's grievance to arbitration was lawful under Sec. 8(b)(1)(A).

[17] Member McFerran acknowledges that the Board has broad remedial discretion and that different remedies might be reasonable under the facts of this case, but in her view a different remedy for the Union's unlawful conduct is appropriate. The underlying policy of Sec. 10(c) of the Act is to create a "restoration of the situation, as nearly as possible, to that which would have been obtained but for the unfair labor practice." *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10, slip op. at 2 (2014) (quoting cases). Here, the Union's violation adversely affected Powell's ability fairly to evaluate the merits of accepting the Employer's settlement offer in light of the prospects for success otherwise. Restoring Powell to the status quo should therefore be grounded in a showing of whether she would have accepted the settlement offer in the absence of the Union's unlawful conduct. Member McFerran would require the Respondent Union to request the Employer to reinstate the Last Chance Agreement settlement offer Powell previously rejected, and give her a reasonable period of time to accept it. If the Employer does so, and the offer is accepted, the Union would be required to make Powell whole for the time period from her earlier rejection of the settlement offer until her present acceptance of it. If Powell were again to reject the offer, the Union would owe her no make-whole relief. If the Employer refuses to reinstate the Last Chance Agreement offer, Member McFerran still would require the Union to make Powell whole if the General Counsel shows in compliance that she would have accepted the offer when it was made in May 2012, had the Union informed her of Faircloth's statement against her. The latter is the next best alternative method to restore the status quo ante, "as nearly as possible," and to provide Powell with a meaningful remedy.

ORDER

The National Labor Relations Board orders that

A. The Respondent Employer, Caravan Knight Facilities Management, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their statements to the Board during the Board's investigation of alleged unfair labor practices.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Sterling Heights, Michigan, copies of the attached notice marked "Appendix A."[18] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 2012.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondent Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 1700, its officers, agents, and representatives, shall

1. Cease and desist from

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(a) Breaching its duty of fair representation by representing a unit employee in connection with his or her grievance arbitrarily or in bad faith.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly request Caravan Knight Facilities Management, Inc. (the Employer) to consider Aretha Powell's grievance and, if it agrees to do so, process the grievance with due diligence in accordance with the collective-bargaining agreement between the Employer and the Respondent Union.

(b) Permit Aretha Powell to be represented by her own counsel at any grievance proceeding, including arbitration or other resolution proceedings, and pay the reasonable legal fees of such counsel.

(c) In the event that it is not possible for the Respondent Union to pursue the grievance, and if the General Counsel shows in compliance proceedings that a timely pursued grievance would have been successful, make Aretha Powell whole for any increases in damages suffered as a consequence of the Respondent Union's failure to process her grievance in good faith, in the manner set forth in the remedy section of this decision.

(d) Within 14 days after service by the Region, post at its union office and all other places where notices to members are customarily posted copies of the attached notice marked "Appendix B."[19] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, deliver to the Regional Director for Region 7 signed copies of the notice in sufficient number for posting by the Employer at its Sterling Heights, Michigan facility, if it wishes, in all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 27, 2015

Philip A. Miscimarra, Member

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate you about your statements to the Board during the Board's investigation of alleged unfair labor practices.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

CARAVAN KNIGHT FACILITIES MANAGEMENT, INC.

The Board's decision can be found at www.nlrb.gov/case/07-CA-081195 or by using the QR code below. Alternatively, you can obtain a copy of the decision

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT breach our duty of fair representation to you by representing you in connection with your grievance arbitrarily or in bad faith.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL promptly request Caravan Knight Facilities Management, Inc. to consider Aretha Powell's grievance and, if it agrees to do so, process the grievance in accordance with our collective-bargaining agreement with the Employer.

WE WILL permit Aretha Powell to be represented by her own counsel at any grievance proceeding, including arbitration or other resolution proceedings, and WE WILL pay the reasonable legal fees of such counsel.

WE WILL, in the event that it is not possible to pursue the grievance, and if the General Counsel of the National Labor Relations Board shows in compliance proceedings that a timely pursued grievance would have been successful, make Aretha Powell whole for any increases in damages suffered as a consequence of our failure to process her grievance in good faith, plus interest.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 1700

The Board's decision can be found at www.nlrb.gov/case/07-CA-081195 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Robert A. Drzyga, Esq., for the General Counsel.
Daniel G. Cohen (Pilchak Cohen & Tice, P.C.), of Auburn Hills, Michigan, for the Respondent Employer.
Darcie R. Brault, Esq. (McKnight, McClow, Canzano, Smith & Radtke, P.C.), of Southfield, Michigan, for the Respondent Unions.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Detroit, Michigan, on November 7–9, 2012, and January 7–8, 2013.[1] The complaint, issued on August 21, alleges that Caravan Knight Facilities Management, LLC (the Company) violated Section 8(a)(1) of the Act by coercively interrogating employees regarding their activities with the Board, Section 8(a)(3) by imposing onerous working conditions on the Aretha Powell, the charging party, and then disciplining her because she engaged in concerted protected activities. The complaint also alleges that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Local 1700 (the Local Union), collectively referred to as the Unions, breached the duty of fair representation owed to Powell in violation of Section 8(b)(1)(A) or (b)(2) of the National Labor Relations Act (the Act) and violated Section 8(a)(3) by causing her termination because she engaged in protected conduct. The Respondent Unions deny the charges and contend that Powell was terminated after threatening another member of the bargaining unit.

[1] All dates are in 2012 unless otherwise indicated.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Company and the Union,[2] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company is a Michigan corporation with a worksite at the Chrysler Sterling Heights Assembly Plant located in Sterling Heights, Michigan, where it annually derives gross revenues in excess of $1 million and, during that same period, purchased and received at the Sterling Heights facility, goods and materials valued in excess of $50,000 directly from points outside of the State of Michigan. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties

The Company performs maintenance, cleaning, and janitorial services for Chrylser at its Sterling Heights Assembly Plant (SHAP). SHAP includes a main plant, the Linkers Building, Fitness Center, and Jitney Repair section. The SHAP supervisors relevant to this dispute include: Lamont Richie and Scott Paulsen, shift supervisors; and Shoun Walle, a site manager.

The Union and the Company are parties to a collective-bargaining agreement (CBA) in effect from December 2009 through November 2012. Janitors are covered by the CBA.[3] In pertinent part, the overtime work provision consisted of two types of overtime assignments—mandatory overtime and voluntary overtime.[4]

Aretha Powell was hired by the Company as a janitor on September 2, 2008, and became a member of the bargaining unit. She started work at SHAP on the third shift and transferred to the first shift in 2011. While on the first shift, Powell worked with approximately 15 other janitors. In 2012, Powell's immediate supervisor was Paulsen. Her duties included sweeping, mopping, cleaning windows, dusting, vacuuming, cleaning restrooms, and emptying trash.[5]

B. Company Operations

The Company's employees at SHAP are assigned to one of three daily 8-hour shifts. Mandatory attendance is required at preshift meetings, which were held in the "cage area" prior to the start of each shift. In May, the preshift meetings were conducted by Richie and Paulsen. The cage area contains supplies, employee lockers, as well as tables, benches, chairs, and a microwave used by employees during breaks and lunch periods.[6] A bulletin board is posted inside the entrance of the cage area. This bulletin board has an overtime sign-up sheet posted on it that employees use to volunteer for overtime.[7]

C. Overtime Work

Janitors work overtime at SHAP. The Company records the number of overtime hours worked by employees on an overtime equalization list. That list has been kept in Walle's office pursuant to his agreement in 2009 with Davis because the posted list was frequently removed or defaced.[8] Employees still had access to their overtime hours upon request or by examining their pay stubs.[9] Weekend overtime is open to employees who volunteer by signing the overtime sign-up sheet. If there are not enough volunteers, employees are supposed to be assigned based on fewest overtime hours worked.

Pursuant to the CBA, overtime lists are required to be posted on the bulletin board. In 2009, however, Site Manager Shoun Walle and union chairperson Lamont Davis agreed that overtime and seniority lists would no longer be posted because they were frequently removed or laced with profanities. In April, Davis informed Walle that unit members were complaining that the overtime and seniority lists were not posted.[10]

D. Body Wash Work Assignments

Overtime work at SHAP can include assignment to clean the Body Wash area, which contains dirty, grimy machinery, and equipment. The work is performed on weekends when the plant operations are shut down. While weekend work also includes other tasks, such as mopping aisles and working in the final wash, the Body Wash is the bulk of the work. Accordingly, it is not an overtime opportunity that most employees, including Powell, seek.[11] During the period of January 1—May 20, a group comprised of four males—LeVaughn Davis, Amber Abobker, Dishan Longmire, and Kiernan Johns—was assigned to clean the Body Wash nearly 79 percent of time.[12] At times, depending on the amount of work, that group would expand to five or six workers. Moreover, the Body Wash group seldom included female employees. During the same period, at least one female employee was assigned to perform work in the

[2] The Union's Motion for Leave to File Response Brief, dated February 28, 2013, is denied, as there is no provision in the Board's Rules for such submissions. Moreover, the General Counsel's request for reconsideration of my trial ruling regarding rejected exhibit GC Exh. 29, and impeachment of Balinda Tanner based on her criminal plea, is also denied.

[3] GC Exh. 2.

[4] GC Exh. 2, Sec.15.

[5] Except as to the Body Wash area, discrepancies between Powell's testimony and the records as to when she worked where within SHAP have little bearing on the issues in this case. (RE Exh. 1; Tr. 106, 270–271, 273–274, 340–343; 532, 841–842.)

[6] It is not disputed that the meetings were held regularly in the cage area. (RU Exh. 4, 16; Tr. 841, 847–851.)

[7] GC Exh. 12; RU Exh. 4, 20.)

[8] RE Exh. 5; Tr. 144, 146, 896, 992–993.

[9] Powell conceded the availability of overtime work information in sources other than the posted list. (Tr. 146, 408–409, 993, 1084–1085.)

[10] There was no evidence to refute Walle's testimony that he and Davis entered into this arrangement in 2009. (GC Exh. 2 at 13; Tr. 80, 91, 144, 146–147, 275–276, 992–993, 1033–1034.)

[11] Davis was the only exception. (Tr. 288–289, 617–618, 748, 898, 995–996).

[12] That group performed Body Wash work on 66 of the 84 weekends between January and May. (GC Exh. 11; Tr. 211–212, 214, 226–227, 287, 364, 564, 582, 749, 764, 788–789.) While the records do not specify dates, Walle credibly explained that employees worked in the Body Wash on the weekends listed. (GC Exh. 11; Tr. 123–124.)

Body Wash 17 percent of the overtime shifts. However, the list was not always accurate, as the number of females who actually worked in the Body Wash area was less.[13]

E. Powell's Discussions Regarding the Overtime List

Powell, the charging party, previously worked the Body Wash when she worked the third shift. By the time she got to the first shift in 2012, the Company knew that she did not want to work in the Body Wash and her wish was granted.[14] Prior to April 11, the Company overtime list reflects that Powell worked two Saturdays, on January 28 and April 7. However, Powell's actual payroll record indicates that she did not work on either of those dates.[15]

On April 11, Powell was working at the Fitness Center when she asked Margaret Faircloth, the steward, why the overtime and seniority lists were not posted on the bulletin board and employees were not getting charged overtime hours. Coworkers Marquita Harris and Shantell Thomas were also present during the discussion. Faircloth said she did not know and asked Powell if she wanted them posted. Powell answered indirectly that the list was supposed to be posted.[16] Faircloth explained that the list was not posted because second and third shift employees were filing grievances alleging that a disproportionate amount of the overtime opportunities were going to first shift employees.[17] A few days later, Powell expressed her concern about the overtime equalization list to Sean Dean, vice president of the Local Union. He responded by directing Davis to post the list.[18]

Later that morning, Harris told Powell that Faircloth informed Davis that Powell and Harris requested that overtime and seniority lists be posted in the cage area. Powell then confronted Faircloth and asked if she did inform Davis and others about her request to have the overtime lists posted. Paulsen and Thomas were present. Paulsen asked if there was a problem. Powell responded that there was no problem, except that the lists were supposed to be posted. Derrick Hamlet, the Local Union alternate chairperson joined the conversation as Powell asked again why the listing was not posted or canvassed so that employees could be charged. Hamlet interjected, said the meeting was over and that the list would be posted the following Monday. Faircloth told Powell that she passed along her request to Davis and others because it was in Powell's best interests. Powell replied that she wanted to leave the Union, which Paulsen explained was not possible. Faircloth, however, said that would be possible.[19]

F. April 12

On April 12, Powell and Harris spoke to Walle about the overtime and seniority lists. Around the same time, Davis also informed Walle about complaints by Powell and others that the overtime list was not posted. Powell told Walle she was concerned about the canvassing of overtime hours and how hours were being charged. Powell reiterated her disinterest in working in the Body Wash as little as possible and urged Walle to canvass the employees to ensure that everyone had at least every other weekend off. Walle replied that he did not care who worked in the Body Wash, provided there were sufficient volunteers. He also explained that the overtime list had not been posted because employees on second and third shift were complaining about not getting enough overtime.[20]

[13] Neither the Company nor the Union refuted the testimony of several credible employees that they did not work in the Body Wash on weekends that their names were on the overtime lists for certain weeks. The witnesses were Jackie Keys (Tr. 121, 550), Marquita Harris (Tr. 593), and Patrice Williams (Tr. 748–749).

[14] It is not disputed that Powell performed Body Wash work prior to transferring to the first shift in 2012. (Tr. 132.) In contrast to her Body Wash assignments while during her time on the third shift, the credible testimony reveals that Powell's desire to avoid Body Wash work while on the first shift was granted, as Walle did not care who performed the work. (Tr. 286289, 589, 616–617.) Circumstances changed, however, after Powell complained in April about the need to post the overtime and seniority lists. She was retrained later that month and assigned to work in the Body Wash on May 5. (Tr. 141, 201202, 297.)

[15] GC Exh. 11, 25.

[16] It is perplexing as to why Powell pushed the issue of posted overtime lists. Her explanation about low overtime hours and lack of seniority as factors that would cause her to be assigned to the Body Wash was not credible since she did not work overtime in the Body Wash since coming to the first shift, as the overwhelming amount of that work was being performed by a specific group of first shift males. (Tr. 278, 287, 407, 414–417, 521, 589.) Indeed, Powell conceded that she did not want to know her overtime hours because she was not "doing overtime" (Tr. 357), which conflicts with her statement to the Board that she was working overtime every weekend. In fact, Powell was able to call out on at least three days that she was assigned to overtime work—March 16, 23, and 29—in order to avoid overtime. (Tr. 446; GC Exh. 25.). In actuality, neither Powell nor Harris wanted the overtime equalization list posted because they would have to work the Body Wash area. (Tr. 281, 592, 617.)

[17] The weight of the credible evidence supports Faircloth's remarks that most overtime opportunities were going to first shift employees and that other employees were complaining. Davis, in particular, worked during most weekends. (Tr. 693, 721, 1019–1021; GC Exh. 11, 24, 28; RE Exh. 20.)

[18] I credit Powell's testimony that she spoke with Dean and that he directed Davis to post the list. (Tr. 74–75, 77–78, 85, 276–279.) Harris credibly corroborated Powell's testimony about the conversation. (Tr. 278–281, 283–284, 287, 418, 446, 481, 586–589, 646.) I am perplexed, however, as to why Powell continued to pursue the issue since she, as well as Harris, did not want to work the Body Wash. (Tr. 281, 592, 617.) Powell's explanation about low overtime hours and lack of seniority as factors that would cause her to be assigned to the Body Wash was not credible, since she had not worked in the Body Wash since coming to the first shift; the overwhelming amount of that work was being performed by a specific group of first-shift male employees. (Tr. 278, 287, 407, 414–417, 521, 589.) Moreover, Powell conceded that she did not want to know her overtime hours because she was not "doing overtime" (Tr. 357), which conflicts with her statement to the Board that she was working overtime every weekend. In fact, Powell avoided overtime by calling out on at least three assigned overtime dates—March 16, 23, and 29. (Tr. 446; GC Exh. 25.)

[19] Faircloth did not refute this credible testimony. (Tr. 282–286, 439, 481–483, 591–593.)

[20] I found Powell's testimony that she confronted Walle more credible than his denial that she spoke with him on April 12. The credible evidence reveals that Powell and Davis had significant problems communicating and that Powell would have gone over his head to Walle. (Tr. 111–112, 146–147, 200, 215, 286–289, 408–415, 447, 521, 616–617.)

G. April 16

Not satisfied with Walle's response, Powell requested a meeting with Local Union Vice President Shawn Dean. On April 16, Powell met with Dean and Davis in the Local Union office. Powell recounted her May 11 conversation with Faircloth, expressed her displeasure with the Union's representation and wanted to leave the bargaining unit. After Dean said he would provide the applicable information, Powell laced into Davis. She chided him for reporting her comment to management instead of speaking with her. Davis responded that he did not have to speak with her. After a further exchange of personal attacks, Dean attempted to calm the situation by sending Davis get Powell's file.[21] Before long, however, Richie called Powell on the phone and instructed her to return to her job, even though she received permission to attend the meeting.[22]

H. Powell's Work Assignment Changes

After speaking to Faircloth on April 11, Powell worked overtime the next five weekends (April 14 through May 12).[23] In addition, on April 20, Richie informed Powell of a change in her work assignment by requiring that she perform her normal duties in 4 hours, and that the remainder of her shift would be dedicated to sweeping floors in the main plant. On April 29, Powell was "trained" in the Body Wash. On May 5, she was assigned to work in the Body Wash for the first time as a first-shift employee.[24]

I. Powell's May 10 Discipline

On May 10, Powell attended the morning preshift meeting in the cage area.[25] Others present included Walle, Paulsen, Faircloth, Belinda Tanner, Williams, Harris, Hamlet, Johns, Bullard, and Moore. During the meeting, Walle observed Powell walk from the area where the meeting was being conducted to look at the bulletin board near the cage area entrance—a distance of approximately 40 to 50 feet away.[26] It was not uncommon for employees to move around or engage in other conduct during the preshift meetings, eating, using the microwave, going to their lockers, or even stand outside the cage area during the meetings.[27]

After the meeting, Richie approached Powell and quizzed her about the main safety topic of the meeting.[28] Walle and Paulsen were also present. Powell responded incorrectly that the presentation dealt with trash pickup, when in fact the main safety topic discussed dealt with cautionary advice to be observant of hi-lo vehicles in their work areas.[29]

Later that day, Powell was issued a written discipline for moving around and not paying attention during the morning meeting.[30] Wanting to avoid communicating with Davis, Powell contacted Dean and Union Local President Bill Parker. Parker assured Powell that someone would get back to her. Davis and Faircloth contacted her the following day and believed that "everything was smoothed out." Powell, however, never asked them to file a grievance concerning the May 10 discipline.[31]

J. Powell's Relationship with Faircloth and Tanner

Sometime in early May, Powell was speaking in the parking lot with Balinda Tanner, Patrice Williams, and Jackie Keys. During that conversation, Powell stated that she wanted to fight Faircloth and offered to pay $100 to anyone else who would fight her. Tanner passed along the comment to Faircloth the next day. Powell, learning that her comments reached Faircloth, apologized to the latter.[32]

Subsequently, on May 10, Powell engaged in a fight at work with Dishan Longmire, her ex-boyfriend, because she saw him embrace Tanner. There is no doubt that this touched off bad feelings between Powell and Tanner.[33]

K. Powell's Suspension

On May 11, as the janitors mulled around the cage area before starting the first shift, Powell was engaging in a conversation with another employee about their supervisor when Tanner made a comment. Powell uttered to Tanner: "I see I'mma have to tear off into your motherfucking ass." Tanner then responded, "[y]eah, yeah, whatever, whatever; that ain't going to hap-

[21] Davis did not credibly refute Powell's assertions that he had a personal problem with her. (Tr. 66, 74–75, 80, 77–80, 93–96, 99, 292–295, 387, 408–415, 505–506, 974–977; RU Exh. 2.)

[22] Richie did not dispute Powell's account. (Tr. 296.)

[23] The credible evidence indicates that the overtime work did not include assignment to the Body Wash. (GC Exh. 25.)

[24] This was the first time Powell worked in the Body Wash area as a first-shift employee. (Tr. 201–202, 296–297, 342, 522–524; GC Exh. 11).

[25] I do not credit testimony by Davis about prior remarks to him by Richie about Powell's conduct at preshift meetings since no one from the Company brought this to Powell's attention prior to May 10. (Tr. 902, 913, 916–918, 1047.) However, I do credit Faircloth's unrefuted testimony that, at her supervisor's request, she spoke with Powell about her conduct wearing headphones and singing while others were talking. (Tr. 1047–1048.)

[26] Consistent with the weight of the credible evidence that Powell did not want to work overtime, I do not credit her testimony that she went to the bulletin board to sign up for overtime. (Tr. 151–153, 254–257, 298–302, 738.)

[27] It is not disputed that employee conduct at pre-shift meetings was a problem that concerned the Company. (Tr. 302–304, 738–740, 790–791, 901, 918, 998–999.)

[28] Richie credibly testified that he was not involved in the discipline issued, but was present when Powell was questioned about the preshift subjects, and he agreed with the discipline. (Tr. 244–245, 254–257.)

[29] Powell did not provide credible evidence that she was paying attention to the presentation. (Tr. 151–152, 300).

[30] GC Exh. 6.

[31] There was scant detail about the May 11 discussion between Powell, Faircloth, and Davis. (Tr. 304–307, 317–320, 355, 423–424, 449, 484–485, 529, 919, 1049–1050.)

[32] This credible testimony by Tanner and Faircloth was not refuted by Powell. (Tr. 923–924, 1060, 1129–1131.)

[33] Powell provided inconsistent and less than credible testimony as her reasons for fighting with Longmire. (Tr. 434, 452–455.) The credible evidence of coworkers indicates that she engaged in the fight because of Tanner. (Tr. 643–645, 669, 812.)

pen."[34] Faircloth was not present in the room at the time.[35]

Immediately following the incident, Tanner reported the comments to Faircloth and Davis, and the three went to Walle to register a complaint against Powell. Faircloth and Tanner each submitted statements. With Davis present, Walle proceeded to interview several employees present during the encounter, including Keys, Moore, and Bullard. Keys and Hudson had no knowledge of anything unusual that happened in the cage area. Moore and Bullard both reported that they did not hear or see any altercation. Hudson told Walle that there was no altercation or threat made by Powell.[36] Meanwhile, Patrice Williams, Longmire, Thomas, and "Deborah" were never interviewed by the Company.[37] Davis, who was present for all of these interviews, never asked any questions at any time, and never took any notes.[38]

Later that morning, Powell spoke with Davis and Faircloth. Davis told Powell that Dean asked him to speak to her about her problems. Powell told Davis she didn't understand how everything got blown out of proportion about the posting (overtime and seniority). Davis explained that he did not request that the overtime and seniority lists be posted so that female employees would not have to work in the Body Wash. Powell suggesting they have union meetings and Davis said he was working on that and the meeting concluded.[39]

On May 12, shortly after Powell reported to work, Faircloth told her to report to Walle's office.[40] When Powell arrived, Davis took her outside and asked if she recently had an altercation with another employee. Powell asked if it was Tanner because she saw them speaking outside that morning. Davis confirmed that he was referring to Tanner. After Powell downplayed any recent communication with Tanner, Davis said he would try to help her. Davis took Powell to the Union trailer where she started to write her statement. Davis told her that she has to watch what she says because everything she says gets back to him, and nothing gets past him.[41]

Davis drove Powell back to Walle's office. When they arrived, Walle and Faircloth were waiting. Powell submitted her statement of the May 11 incident with Tanner, at which point Walle told her that she was suspended pending an investigation of the alleged threat.[42] Powell, however, refused to sign the suspension. Neither Faircloth nor Davis spoke up on her behalf during this meeting.[43]

L. Powell's Discharge and Grievance

Powell was terminated on May 16 for threatening Tanner on May 11.[44] In arriving at that decision, Walle considered Powell's bad attitude and personal demeanor, although there was no reference to those characteristics in her personnel file. Given the quantum of witness statements either favoring Powell's position that nothing significant happened on May 11, it is clear that Walle's problem with her attitude was the driving force behind his decision to terminate her.[45]

On May 18, Faircloth filed a timely grievance challenging Powell's discharge. Faircloth represented Powell at the step 1 meeting, but offered no arguments on her behalf. The grievance was denied at step 1.[46]

The Local Union proceeded to step 2. After Davis met with Walle, the Company agreed to settle the grievance by reinstating Powell, with no backpay, on the condition that she complete an anger management class and submit to a 90-day last chance agreement.[47] The proposed settlement was consistent with the recent settlement of Kendall Shepard's grievance after he was terminated for threatening Faircloth in June 2011. Shepard accepted the settlement, completed its conditions, and was reinstated.[48]

On or about May 23, Davis contacted Powell and relayed the settlement proposal to her, plus the condition that Powell[49] drop

[34] The General Counsel sought to impeach Tanner's credibility based on a previous guilty plea to an assault. (Tr. 1167–1174.) I foreclosed additional inquiry into the circumstances regardless this prior bad act, as they were collateral to the matter at hand and had little relevance in assessing truthfulness. In any event, I found Tanner's testimony more credible than the tentative and inconsistent testimony of Powell. (Tr. 315–317, 473–476, 480, 743–744, 1135–1140; RE Exh.4, 7, 20.)

[35] I find, based on the credible testimony of Hudson that Faircloth was not present at the time. (Tr. 784–785, 1061–1062.) As an aside, it should be noted that I precluded testimony by Tanner as to whether Faircloth ever directed a racial slur towards her as a collateral issue. (Tr. 1154–1160.)

[36] I credit the testimony of these witnesses. (Tr. 112–118, 117, 173–174, 184–186, 217–218, 545, 547–548, 560, 583, 781–784, 787, 804–805, 927, 939–940; GC Exh. 5.)

[37] Williams is the only one who testified (Tr. 745), but there is no documentary evidence that the others were interviewed.

[38] It is evident that Davis' role as Union representative on behalf of Powell was entirely passive. (Tr. 202–203, 1003–1015.)

[39] Powell testified that she thought, based on the conversations in the meeting, that her problems relating to the Tanner incident were resolved. (Tr. 317–320.)

[40] Walle confirmed Powell's testimony that she gave her statement on May 12. (Tr. 155–156, 160; RE Exh. 7.) As such, I do not credit Davis' testimony that he took Powell's statement on May 11.

[41] I base this finding on Powell's credible testimony. (Tr. 320–324.)

[42] Company human resources director, Ruth Ann Little testified that she consulted Walle during the investigation and she had no knowledge of any other misconduct Powell committed at the time she made her decision/recommendation, and there were no other incidents of similar misconduct in Powell's file. (Tr. 51–52, 56.)

[43] Neither Davis nor Faircloth disputed Powell's testimony that they were silent during the May 12 meeting with Walle. (GC Exh. 8; Tr. 155–156, 188, 191–192, 325–328, 393, 398, 949–951).

[44] GC Exh. 9.

[45] It is clear that Walle had a significant problem with Powell's attitude and that was the driving force behind his decision to terminate. However, I found no credible evidence to suggest that Davis, Faircloth, Tanner or anyone else from the Local Union exerted undue influence into that decision. (Tr. 111, 119–120, 163, 868; GC Exh. 8–9; RU Exh. 1011.)

[46] It is undisputed that Faircloth remained silent throughout the first step meeting. (GC Exh. 10; Tr. 111, 113, 194, 957, 1077–1078, 1125.)

[47] GC Exh. 10; Tr. 166–167, 956-957, 961, 1025.

[48] RE Exh. 14A–C.

[49] Davis testified that he spoke with a Chrysler official about providing Powell with access to a free anger management course. (Tr. 958–960.) He did not, however, refute Powell's testimony that he never told her that such a resource was available. (Tr. 379.)

the NLRB charges[50] against management. Davis also informed Powell she would have to take an anger management course at her own expense. Powell said she was unemployed and could not afford to pay for such a course. Davis replied that the Company did not comment on that. Powell rejected the offer. Davis then settled the grievance at the second step, making no counterproposal.[51]

On or about May 25, Powell called Faircloth and asked her if a grievance was filed on her discharge because she never saw one. Faircloth replied there was. Powell then told Faircloth she wanted to advance her grievance to arbitration. Faircloth informed her that is not how it works, and told her the grievance had to take its course. Powell then received a call from Davis. Powell asked Davis what type of investigation he did, and how it was determined that she was guilty and then terminated. Davis responded that "none of your co-workers had your back. None of them came to your rescue." Davis also told Powell since she turned down the offer there was nothing else that he could do.[52]

After Powell filed charges with the Board, Wille conducted additional interviews of employees about the May 11 incident. On June 20, he interviewed Keyes, with Davis present.[53] He asked Keys why she told Board representatives that management never interviewed her during the initial investigation. Keys denied making such a statement and the interview concluded.[54]

Legal Analysis

I. ALLEGATIONS AGAINST THE COMPANY

The General Counsel contends that the Company violated Section 8(a)(3) and (1) of the Act by discharging Powell because she engaged in protected concerted activity, and (2) violated Section 8(a)(1) by Walle's coercive interrogation of employees regarding their communications with the Board.

A. The 8(a)(3) Charge

Charges alleging 8(a)(3) violations are analyzed under the *Wright Line* framework, which requires the General Counsel to make a prima facie showing sufficient proof to support the inference that protected conduct was a motivating factor in the employer's decision. 251 NLRB 1083, 1089 (1980). To meet this burden, the General Counsel must establish that the employee engaged in protected activity, the employer had knowledge of the protected activity, and that the employer took adverse action against the employee as a result of this protected activity. *American Gardens Mgmt. Co.*, 338 NLRB 644, 645 (2002). Once the General Counsel has proven these elements, the burden shifts to the employer to demonstrate that he would have taken the same action even in the absence of protected conduct. *Manno Electric*, 321 NLRB 278, 281 (1996). If the evidence establishes that the reasons given for the discharge are pretextual, either in that they are false or not relied on, the employer has failed to show that it would have taken the same action absent the protected conduct, and there is no need to perform the second part of the *Wright Line* analysis. *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003).

Walle's investigation of the incident on May 11 between Powell and Tanner was clearly flawed. Tanner and Faircloth submitted written statements accusing Powell of conveying a threat on May 11. However, Walle interviewed other employees about the incident, including Keys, Moore, Bullard, and Hudson, but none of them corroborated Tanner's story. Keys and Hudson stated that they had no knowledge of anything unusual that happened in the cage area, while Moore and Bullard reported that they did not hear or see any altercation. Although the quantity of testimony does not necessarily mean that Walle would have been expected to have arrived at a different decision, there was no credible explanation by Walle as to whether he even considered the testimony of employees other than Tanner and Faircloth.

Nonetheless, I find that Walle *already* had a problem with Powell's general attitude—even though her attitude had not been reflected in her personnel file—which was the driving force behind his decision to terminate her. Such circumstances are normally seen as pretextual and indicative of unlawful motivation under *Golden State Foods Crop.* However, there is no indication here that Walle's problems with Powell were at all connected in any way to her protected concerted activities, such as the issue concerning her demands that the overtime list be posted on the bulletin board. It is also clear that Walle did not care whether Powell worked in the Body Wash area. Powell was assigned to the Body Wash area on May 5 as a direct result of her advocacy for the posting of the list. However, such a response could hardly be deemed an adverse action, as it was a direct result of the Company action that she advocated—the posting of an overtime list and assignment to overtime work, including the Body Wash. Without a causal connection between the alleged coercive or restraining activity and exercise of protected concerted activities under Section 7, the General Counsel has not established that the Company violated Section 8(a)(3) by firing Powell due to an *unlawfully* discriminatory purpose. That charge is dismissed.

B. The 8(a)(1) Charge

An employer violates Section 8(a)(1) when it engages in the coercive interrogation of employees regarding their communications with the Board. In *Johnnie's Poultry*, 146 NLRB 770, the Board articulated a policy for permitting employers to interview employees in preparation for a Board trial: (1) communicate to the employee about the purpose of the interview; (2) assure the employee that no reprisals would occur; (3) obtain the employee's participation on a voluntary basis; (4) con-

[50] The Company was served a copy of the unfair labor practice charge by regular mail on May 17, approximately 6 days before this conversation. (GC Exh. 1(a)-(b).)

[51] Powell's testimony made it clear that she would still not have accepted the last chance agreement even if the anger management class was free. (Tr. 125, 167, 329–330, 379–380, 501, 961, 1023–1026.)

[52] This finding is based on Powell's unrefuted testimony. (Tr. 331–333.)

[53] Davis' testimony that it was Keys who contacted Walle about the Board statement was not credible in light of Walle's testimony that he called her back to re-interview her. (Tr. 967–969; GC Exh. 4.)

[54] The General Counsel correctly notes that the record indicates that Walle never informed Keys that any response voluntary and not subject to reprisals. (Tr. 32–36, 118, 130–131, 548–549, 580; GC Exh. 3–5.)

duct the interview in an environment free of employer hostility; and (5) not be coercive in nature.

On June 20, after Powell filed charges, Keys was summoned to meet with Wille. With Davis present, Will interrogated Keys for a second time about the May 11 incident. He asked her why she told Board representatives that management never interviewed her during the initial investigation. Keys denied making such a statement and the interview concluded. At the time, a Board trial was not yet scheduled in connection with Powell's charges.

Accordingly, as noted by the Company, the conversation must be analyzed under the Board's totality of circumstances approach for interrogating employees in *Rossmore House*, 269 NLRB 1176 (1984). See also *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964). Applicable factors include whether the employee is an open union supporter, the background of the interrogation, the nature of the information sought, the identity of the questioner, and time, place, and method of interrogation.

In this case, the background reveals no history of Company hostility towards the Local Union; indeed, Wille and Davis worked extremely well together. The meeting was conducted in Wille's office with Davis, the Union representative present. The meeting was formal, but brief. The information sought by Wille, Keys direct supervisor, related to whether Keys provided the Board with the incorrect information that Wille did not interview her during the disciplinary investigation when he actually did; the question was obviously based on public information in the charges and did not involve anything confidential in nature. Under the totality of the circumstances, I do not find the interrogation unlawfully coercive and dismiss that charge.

II. ALLEGATIONS AGAINST THE UNION

The complaint alleges that: (1) the Union violated Section 8(b)(1)(A) of the Act by refusing to process Powell's discharge grievance to arbitration because she requested the posting of seniority and overtime lists pursuant to the collective bargaining agreement for reasons that were "arbitrary, discriminatory and in bad faith;" and (2) violated Section 8(b)(2) of the Act by presenting witness statements against Powell because the latter requested the Company to post overtime and seniority lists as required by the collective-bargaining agreement, and Section 8(a)(3) by causing the Company to discharge Powell.

A. The 8(b)(1)(A) Charge

It is well established that "the Union has a duty of fair representation on behalf of all those for whom it acts without hostile discrimination. A union's power must be exercised fairly, impartially, and in good faith which gives an employee the right to be free from unfair or irrelevant or invidious treatment by his exclusive bargaining agent." *Bottle Blowers Local 106*, 240 NLRB 324, 328 (1979). "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). But "[w]here . . . a union undertakes to process a grievance but decides to abandon the grievance short of arbitration, the finding of a violation turns not on the merit of the grievance but rather on whether the union's disposition of the grievance was perfunctory or motivated by ill will or other invidious considerations." *Bottle Blowers Local 106*, at 328. "Though . . . a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement." *Vaca v. Sipes*, supra at 191.

It is undisputed that there were bad relations between Powell and the three Local Union officials involved—Davis, Faircloth and Tanner—and they preferred to communicate with Powell as little as possible. It is also evident that Davis was directly affected by Powell's insistence that the overtime list be posted, since he stood to work less overtime in the Body Wash if the assignments were more evenly distributed among the employees. Nevertheless, it is undisputed that the Local Union filed a grievance discharge on Powell's behalf. After proceeding to step 2, Davis was able to negotiate a settlement reinstating Powell if she signed a last chance agreement and agree to complete an anger management course. The settlement was consistent with the recent settlement of another employee's grievance involving similar facts. The General Counsel argues, however, that neither Davis nor Faircloth sought to take the grievance to arbitration after Powell declined a settlement at step 2.

There is an absence of discernible, credible evidence that the Local Union proceeded arbitrarily or in bad faith at step 1 or 2. The duty of fair representation does not grant individuals the absolute right—especially in a case where the Union negotiated a settlement—to have his grievance taken to arbitration regardless of the provisions of the applicable collective-bargaining agreement. *Vaca v. Sipes,* 386 U.S. at 191–192.

Under the circumstances, I conclude that the Local Union did not breach its duty of fair representation in Powell's case. There were definitely bad relations between Davis, Faircloth, Tanner and Powell. However, she was offered a reasonable deal and turned it down. In fact, the evidence reveals that Powell would still have declined the settlement even if the anger management course was offered at no cost to her.

The General Counsel also contends alleges that Tanner and Faircloth, acting as Local Union agents, restrained or coerced Powell in violation of Section 8(b)(1)(A) by submitting witness statements against her because she insisted that overtime list be posted.

With respect to motivation, there were definitely bad relations between Faircloth and Powell, even before the latter raised the issue of posting the overtime list. As to Tanner, there was a personal situation brewing involving Powell's exboyfriend; there is no evidence, however, that she knew anything about the overtime list issue.

The General Counsel has the burden to prove that Tanner and Faircloth acted as union agents when they submitted witness statements accusing Powell of threatening Tanner. *Tyson Fresh Meats, Inc.*, 343 NLRB 1335 (2004). While Tanner and Faircloth had positions within the Local Union, at the time, they were acting in their capacities as employees involved in, or witness to, an incident and required to submit statements during the resulting investigation. The fact that they had positions

with the Local Union did not require them to refrain from cooperating with a workplace investigation or take some other action. *IBEW, Local 45,* 345 NLRB 7 (2005); *Building & Construction Trades Council, Local 397,* 132 NLRB 1564 (1961).

Under the circumstances, I dismiss the Section 8(b)(1)(A) charge.

B. The 8(b)(2) Charge

The General Counsel also contends that the Local Union violated Section 8(b)(2) when Tanner and Faircloth submitted their statements in order to cause Powell's termination because she requested the posting of the overtime list.

An 8(b)(2) violation requires a showing that the Local Union caused or attempted to cause Powell's discharge. *Acklin Stamping Co.*, 351 NLRB 1263 (2007). In this case, even if Tanner and Faircloth were acting as union agents—they were not—there is no credible proof that they did anything, *separate and apart from submitting their required employee witness statements,* to cause the Company to terminate Powell. *North Hills Office Services, Inc.,* 346 NLRB 96 (2006). Under the circumstances, I dismiss this charge as well.

With respect to the International Union, there is no credible proof that any of its officials were involved in Powell's discipline or the Local Union's handling of the ensuing grievance. Powell called the International Union when she became frustrated with her communications with the Local Union, but the call resulted in the Local Union followed up after that. Given the legal distinction between the Local and International Unions, there is no derivative duty of fair representation on the part of the latter. *Carbon Fuel Co. v. Mine Workers,* 444 U.S. 212 (1979). Accordingly, the International Union's prima facie motion to dismiss, upon which I initially reserved decision, is granted as to all charges against it.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Local and International Unions are labor organizations within the meaning of Section 2(5) of the Act.

3. The Company, Local Union, and International Union have not violated the Act as alleged.

ORDER

The complaint is dismissed in its entirety.[55]

Dated, Washington, D.C. April 3, 2013

[55] If no exceptions are filed as provided by Section 102.46 of the Boards Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.